IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4012 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINOD DHANJI KOLI

Versus

DISTRICT MAGISTRATE JAMNAGAR

Appearance:

1. Special Civil Application No. 4012 of 2004

MR KARTIK V PANDYA for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by the detaining authority, by its order dated 22.12.2003 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" and "dangerous person" under PASA. Along with the order, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference about ten criminal cases filed against the petitioner

under the Bombay Prohibition Act as well as Indian Penal Code. It is alleged in the grounds of detention that the petitioner is dealing in country made liquor and accordingly doing illegal bootlegging activities. After recording subjective satisfaction, the detaining authority has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. Learned advocate for the petitioner submitted that, the names of secret witnesses are not disclosed by claiming privilege under Section 9(2) of the PASA. He, however, submitted that one of the witnesses i.e. witness No.4, has not even requested while giving the statement that his name be kept as secret. He, therefore, submitted that on that ground the authority has not properly satisfied itself about keeping the name secret by claiming privilege under sec.9(2) of the PASA. In this behalf, he has relied upon Unreported decision of this Court delivered in Special Civil Applications Nos.1229 and 1297 of 1992 decided on 9.11.1992, wherein this Court has held as under:-

> "The detaining authority has claimed privilege under Section 9(2) of the PASA and thereby not given the names, addresses and the occupations of the witnesses, as according to the detaining authority witnesses had the fear to their life and property because of the detenues and, therefore, they have requested not to disclose their identity. However, we have gone through the statements of all the five witnesses and except witness No.3 all the witnesses have requested to keep their entire statement secret. In fact witness No.3 has not at all requested to keep his statement secret or not to disclose his identity. Thus there is total non application of mind on the part of the detaining authority while claiming privilege under Section 9(2) of PASA qua witness No.3. Therefore, the impugned orders are required to be quashed and set aside."

4. Learned advocate for the petitioner further submitted that, some of the documents supplied to the petitioner are absolutely not legible, for which he has relied upon page Nos.141, 171, 179 and 181. All these documents are also taken into consideration for passing the detention order.

5. So far as the aforesaid aspect is concerned, learned AGP has submitted that, these documents are not

very legible. It was the duty of the Government to give atleast proper typed copies to the detenu. Since the said documents are not legible, the right of detenu to make effective representation is denied on the aforesaid ground. Thus there is total non application of mind on the part of the detaining authority while claiming privilege under Section 9(2) of PASA, and also by not supplying legible copies to the detenu for making effective representation to the authority. Therefore, the impugned order is required to be quashed and set aside on both the grounds.

6. In view of what is stated above, this petition is allowed. The order of detention dated 22.12.2003 is quashed and set aside. The detenu, Vinod Dhanji Koli, is ordered to be set at liberty forthwith, if he is not required in connection with any other case.

7. At this stage, learned advocate for the petitioner, has voluntarily made a statement after taking instructions from his client that, the petitioner will not enter into Jamnagar City areas upto 31st October, 2004, unless he is required to appear in any other case for attending the court. The Concerned Police Officer may also monitor this aspect so that the statement of the petitioner can be effectively taken care of by the authorities. Rule is made absolute to the aforesaid extent.

(P.B. Majmudar, J.)

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